

FILED  
UNITED STATES DISTRICT COURT IN CLERKS OFFICE  
DISTRICT OF MASSACHUSETTS

2005 FEB 23 P 2:25

MARY DESMOND, THOMAS ZIOBROWSKI,  
PAUL WATTS on their own behalf and on  
behalf of other participants in the defendant ERISA  
Plans

**Plaintiffs,**

v.

MORTON C. BATT, ANTHONY L. SCIALABBA,  
CITISTREET, LLC, WHITE & WILLIAMS, LLP,  
SCIALABBA & MORRISON, P.C.,  
ANTHONY L. SCIALABBA & ASSOCIATES, P.C.)  
THE STANDARD AUTOMOTIVE 401(K) PLAN,  
THE STANDARD AUTOMOTIVE EMPLOYER  
CONTRIBUTION PLAN,  
**Defendants.**

U.S. DISTRICT COURT  
DISTRICT OF MASS.

**05 CV 10355 NG**

Civil Action No. \_\_\_\_\_

RECEIPT # \_\_\_\_\_  
AMOUNT \$ 250.00  
SUMMONS ISSUED 4  
LOCAL RULE 4.1 -  
WAIVER FORM -  
MCF ISSUED -  
BY DPTY. CLK. M.P.  
DATE 2/23/05

11  
**MAGISTRATE JUDGE** *New Mag. Judge*

**COMPLAINT AND DEMAND FOR JURY TRIAL**

**INTRODUCTION**

1. Plaintiffs are participants in two ERISA plans established by their former employer, Standard Automotive Corporation ("Standard"), a 401(k) plan and an employer contribution plan (the "Plans"). Plaintiffs' employment with Standard ended on August 7, 2002 when the division for which they worked was sold to Ranor, Inc. In November 2002, the plaintiffs, together with the majority of participants in the Plans, requested that their 401(k) accounts be distributed or "rolled over" into their new employer's 401(k) Plan. This request was denied by the Plans' administrator without an adequate explanation. Plaintiffs' 401(k) funds, the vast majority of which derive from employee contributions of their pre-tax wages, have now been held for over two years beyond their reach. During this period, approximately 34% of each

participant's savings account balance has been deducted for administrative fees and expenses. The plan administrator has just revealed that some \$358,871.41 was expended in 2004 alone for fees and expenses that conferred no benefit on Plan participants. On information and belief, plan administrators and those in concert with them have taken approximately \$800,000 from total plan assets of approximately \$2,300,000.

2. Plaintiffs bring this action under ERISA for injunctive relief, to recover benefits due them under the Plans, for relief based upon certain Defendants' fiduciary duty breaches, including payment from the Plans of unreasonable compensation to fiduciaries and other parties in interest, and for failure to provide requested information to plan participants. In short, this action is brought by Plaintiffs to stop the looting of their retirement savings and to seek full restitution to the Plans for the damage done.

### **PARTIES**

3. Plaintiff Mary Desmond is an individual who resides at 124 Lincoln Ave., Winchendon, Massachusetts.

4. Plaintiff Thomas Ziobrowski is an individual who resides at 384 Forristall Road, Winchendon, Massachusetts.

5. Plaintiff Paul Watts is an individual who resides at 7 Crystal Street, Wakefield, Middlesex County, Massachusetts.

6. Defendant Anthony L. Scialabba (hereinafter "Scialabba") is an individual who conducts business at 1002, Lincoln Drive, Marlton, New Jersey and, on information and belief, resides at 7 Progress Place, Voorhees, New Jersey, 08043.

7. Defendant Morton C. Batt ("Batt") is an individual who, on information and

belief, resides at 1804 Morris Drive, Cherry Hill, New Jersey.

8. Defendant White and Williams LLP (“White & Williams”) is a Pennsylvania limited liability general partnership with its principal place of business at 1800 One Liberty Place, Philadelphia, Pennsylvania.

9. CitiStreet LLC (hereinafter, “CitiStreet”) is a Delaware limited liability company with its principal place of business at Three Batterymarch Park, Quincy, Norfolk County, Massachusetts.

10. Scialabba & Morrison, P.C. is a New Jersey professional corporation with its principal place of business at 1002 Lincoln Drive West, Suite B, Marlton, New Jersey.

11. Anthony L. Scialabba & Associates, P.C. (“ALS”) is, on information and belief, a New Jersey professional corporation with its principal place of business at 1002 Lincoln Drive, Marlton, New Jersey.

12. The Standard Automotive Corporation 401(k) Plan and Employer Contribution Plan (the “Plans”) are made nominal defendants for the purposes of providing complete relief.

### **JURISDICTION**

13. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, as this case is based upon one or more causes of action arising under the laws of the United States, including under Section 502(a)(3) of the Employment Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1132(a)(3) (hereinafter, “ERISA”).

14. This District is an appropriate venue for this case pursuant to 28 U.S.C. § 1391(b) and ERISA Section 502(e)(2), 29 U.S.C. § 1132(e)(2).

## FACTS

15. Standard Automotive Corporation sponsored two employee benefit plans the Standard Automotive Corporation 401(k) Plan and the Standard Automotive Employer Contribution Plan (together, the “Plans”).

16. The Plans are employee pension and benefits plan subject to the protections and requirements of ERISA.

17. At all relevant times and currently, Plaintiffs are Participants in the Plans.

18. At all relevant times and currently, Defendants Batt, Scialabba and CitiStreet have served as fiduciaries under the Plans.

19. At all relevant times and currently, Defendants ALS, Scialabba & Morrison, P.C., White and Williams LLP, Scialabba and CitiStreet have been “parties in interest” with respect to the Plans.

20. On or about August 7, 2002, the Plaintiffs’ employment with Standard terminated when Standard sold their division to Ranor, Inc.

21. In or about November 2002, Plaintiffs properly sought a distribution or “roll over” of their 401(k) accounts into the 401(k) plan of their new employer.

22. Defendants failed and refused to “roll over” Plaintiffs accounts and continue to hold Plaintiffs funds over two years after Plaintiffs filed their request for distributions.

23. Defendants Scialabba’s and Batt’s purported reason for withholding Plaintiffs’ distributions was because of issues with plan termination. On information and belief, termination of the Plans should have taken only six (6) months with administrative costs of \$35,000 or less.

24. On information and belief, Defendants Scialabba's and Batt's actual purpose in withholding Plaintiffs distributions was to take excessive and unreasonable "administrative" fees for themselves and their affiliates in violation of their fiduciary duties.

25. Since January 1, 2003, Plaintiffs have had over 30% of their retirement savings deducted from the Plans as "administrative" fees.

26. On information and belief, the Plans had assets of approximately \$2,300,00.00 in January 2003. As such, Defendants have caused or permitted the Plan has pay over \$800,000 in excessive fees and expenses since that time.

**COUNT I – Breach of Fiduciary Duty Under ERISA**  
**[29 U.S.C. § 1109 and 1132(a)(2)]**  
**(Plaintiffs v. Defendants Batt, Scialabba, and CitiStreet)**

27. Plaintiffs restate and incorporate by reference all of the allegations in Paragraphs 1- 26 above as though fully set forth herein.

28. Defendants Batt, Scialabba and Citistreet have violated their fiduciary duties under ERISA – including the duty to act with the care, skill, prudence, and diligence of a prudent person acting in a like capacity and familiar with these matters – by paying excessive compensation to themselves and others and/or following instructions that permitted such excessive compensation to be paid in violation of ERISA. In addition, Batt and Scialabba violated their fiduciary duties by failing to promptly and skillfully terminate the Plans and distribute participants' funds.

29. As a reasonable and proximate result of the foregoing violation, harm has been done both to the Plans and to Plaintiffs personally, in violation of ERISA.

30. Defendants Batt and Scialabba and CitiStreet are personally liable to reimburse

the Plans for harm caused thereto as a result fo their fiduciary duty breaches including reimbursement of all unreasonable fees paid by and to them.

31. Plaintiffs also are entitled to such further equitable relief as may be available to enforce their rights under the Plans, including (without limitation) removal of Batt as plan administrator/trustee and appointment of a skilled and independent plan administrator to terminate the plan and properly disburse retirement funds to the participants.

**COUNT II – VIOLATIONS OF ERISA**

**[29 U.S.C. §1132(a)(3)]**

**(Plaintiffs v. Defendants Batt, Scialabba, CitiStreet, White & Williams,  
Scialabba & Morrison and ALS )**

32. Plaintiffs restate and incorporate by reference all of the allegations in Paragraphs 1-31 above as though fully set forth herein.

33. Defendants have violated specific provisions of ERISA by paying and or receiving compensation from the Plans that was more than reasonable in light of the services rendered including, without limitation,

- (i) over \$700,000 (or over one third of participant funds) in administrative fees from January 2003 to the present;
- (ii) \$256,933.21 paid to ALS in 2004 alone;
- (iii) \$75,000 paid to White & Williams in 2004 alone
- (iv) \$23,286.70 paid to Batt in 2004 alone.

34. As a reasonable and proximate result of the foregoing violation, harm has been done both to the Plans and to Plaintiffs personally, in violation of ERISA.

35. Defendants Batt, Scialabba and CitiStreet are personally liable to reimburse the

Plans for harm caused thereto as a result of their fiduciary duty breaches and Defendants White & Williams, ALS and Scialabba and Morrison are liable as parties in interest to provide full restitution of amounts received in violation of ERISA.

36. Plaintiffs also are entitled to such further equitable relief as may be available to enforce their rights under ERISA and the Plans, including injunctive relief, restitution, rescission and “make whole relief”.

**COUNT III – Unlawful Denial of Benefits Under ERISA**  
**[29 U.S.C. § 1132(a)(1)(B)]**  
**(Plaintiffs v. Defendant Plans, Batt, CitiStreet and Scialabba)**

37. Plaintiffs restate and incorporate by reference all of the allegations in Paragraphs 1-36 above as though fully set forth herein.

38. Having taken all necessary preliminary steps, Plaintiffs and other similarly situated Plan participants are entitled to “roll over” distributions of their Plan accounts in the 401(k) plans of their new employer.

39. Defendants failed to fulfil their obligation to provide “roll over” distributions under the Plans.

40. Plaintiffs have exhausted all administrative prerequisites to judicially compel Defendants to fulfill their obligations under the Plans.

41. As a result of Defendants failure to make requested “roll over” distributions Plaintiffs and those participants similarly situated have suffered monetary loss and injury to their reasonable retirement plans and expectations.

42. The foregoing conduct of Defendants are in violation of ERISA.

**COUNT IV - Unlawful Refusal to Supply ERISA Mandated Information**  
**[29 U.S.C. § 1132(c)(1)]**  
**(Plaintiffs v. Defendants Batt and Scialabba)**

43. Plaintiffs restate and incorporate by reference all of the allegations in Paragraphs 1-42 above as though fully set forth herein.

44. Since approximately January 2003, Plaintiffs, and other Plan participants, have requested information from Scialabba and Batt during the periods each acted as plan administrator.

45. Batt and Scialabba failed and refused to provide the requested information as required by ERISA within 30 days of the requests.

**WHEREFORE**, Plaintiffs respectfully request that this Court

A. Issue a temporary restraining order preventing any further deductions or withdrawals from the Plans to pay any expenses, whether characterized as “administrative expenses” or otherwise, pending further order of this Court; ordering those defendants that have received funds from the Plans to segregate and hold those funds pending the outcome of this litigation; and ordering Morton C. Batt to take no action as administrator or trustee of the Plans without prior approval of this Court;

B. Issue an order for expedited discovery in this action commencing immediately, and set a schedule for trial of this matter within six months;

C. After hearing, issue a preliminary injunction preventing any further deductions or withdrawals from the Plans to pay any expenses, whether characterized as “administrative expenses” or otherwise, pending further order of this Court; ordering those defendants that have



received funds from the Plans to segregate and hold those funds pending the outcome of this litigation; and ordering Morton C. Batt to take no action as

D. Enter a judgment in favor of Plaintiffs and against Defendants on Count I ordering that full restitution be made to the Plans by Scialabba, CitiStreet and Batt for unreasonable compensation paid from the Plans and other damage done to the Plans by the unreasonable and excessive delay in terminating the Plans and providing participants with benefits due under the Plans.

E. Enter a judgment in favor of Plaintiffs and against Defendants on Count II, ordering Defendants to reimburse the Plans for all damages caused, and further awarding Plaintiffs such further equitable relief as may be available and just.

F. Enter a judgment in favor of Plaintiffs and against Defendants on Count III, ordering Defendants and the Plans to permit a “roll over” distribution of funds of the Plaintiffs and other similarly situated participants.

G. Enter a judgment in favor of Plaintiffs and against Defendants on Count IV and award Plaintiffs \$100 per day for each violation of 29 U.S.C. § 1132(c)(1).

E. Award Plaintiffs the cost of this suit, including reasonable attorneys’ fees and enter an order awarding Plaintiffs such further and additional relief as may be available in law or equity, and which is just in this case.

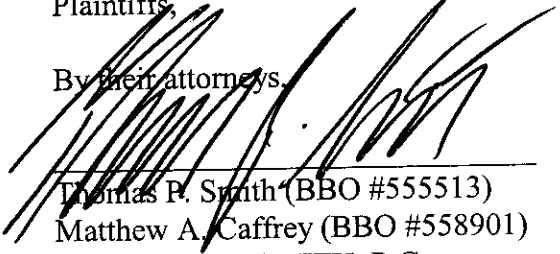
\* \* \*

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all counts so triable.

Plaintiffs,

By their attorneys,



Thomas P. Smith (BBO #555513)

Matthew A. Caffrey (BBO #558901)

CAFFREY & SMITH, P.C.

300 Essex Street

Lawrence, MA 01840

Telephone: (978) 686-6151

Telecopy: (978) 686-3399

Dated: February 23, 2005

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Paul Watts, Mary Desmond, Thomas Ziobrowski

## DEFENDANTS

Anthony Scialabba, Morton S. CitiStreet LLC, White & Williams LLP  
 Anthony L. Scialabba & Associates, P.C.

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE LAND INVOLVED. DISTRICT OF MASS.

Attorney (If known)

C. 05-10355 NG

(b) County of Residence of First Listed Plaintiff Middlesex MA  
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thomas P. Smith, Caffrey & Smith, P.C.  
 300 Essex St., Lawrence, MA 01840

978-686-6151

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 USC sec. 1109

Brief description of cause: ERISA breach of fiduciary duty

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 800,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions): none

JUDGE

DOCKET NUMBER

DATE

2/23/2005

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Watt v. Scialabba **FILED**  
**IN CLERKS OFFICE**

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT. **U.S. DISTRICT COURT**  
**DISTRICT OF MASS.**
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. **Also complete AO 120 or AO 121 for patent, trademark or copyright cases**
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891. **05 CV 10355 NG**
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

none

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☒

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☐ NO ☒A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas P. SmithADDRESS Caffrey & Smith, P.C., 300 Essex St., Lawrence, MA 01840TELEPHONE NO. 978-686-6151

*Caffrey & Smith, P.C.*

*Thomas J. Caffrey  
Matthew A. Caffrey \*  
Thomas P. Smith  
Alanna Caffrey Rosenberg  
Samer Obeid  
\*also admitted in N.H.*

*P.O. Box 1317  
300 Essex Street, Lawrence, Ma 01842  
978-686-6151  
Fax 978-683-3399  
E-Mail: SOBEID@CAFFREYSMITH.COM*

February 23, 2005

**05 10355 NG**

**VIA HAND DELIVERY**

Civil Clerk's Office  
United States District Court  
District of Massachusetts  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way  
Boston, MA 02210

Re: Mary Desmond, Thomas Ziobrowski, et al. v. Morton C.  
Batt, Anthony L. Scialabba, Citistreet, LLC, et al.;  
United States District Court, District of  
Massachusetts; Civil Action No.

Dear Sir or Madam:

Enclosed please find the following documents for filing in  
connection with the above-referenced matter:

1. Complaint;
2. Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction and associated affidavits; and
3. Plaintiffs' Memorandum of Law in Support of Motion for Temporary Restraining Order and Preliminary Injunction.

I have also enclosed a check in the amount of \$250.00 to  
cover the filing fee.

Kindly acknowledge receipt of said documents by stamping the  
enclosed copy of this letter and returning it to me.